United Nations CEDAW/C/MYS/CO/3-5

Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Concluding observations on the combined third to fifth periodic reports of Malaysia*

1. The Committee considered the combined third to fifth periodic reports of Malaysia (CEDAW/C/MYS/3-5) at its 1572nd and 1573rd meetings, on 20 February 2018 (see CEDAW/C/SR.1572 and CEDAW/C/SR.1573). The Committee's list of issues and questions is contained in CEDAW/C/MYS/Q/3-5 and the responses of Malaysia are contained in CEDAW/C/MYS/Q/3-5/Add.1.

A. Introduction

2. The Committee appreciates the submission by the State party of its combined third to fifth periodic reports, but regrets the eight-year delay. It also appreciates the State party's written replies to the list of issues and questions raised by the pre-sessional working group. It welcomes the oral presentation by the delegation and the additional clarification provided in response to the questions posed orally by the Committee during the dialogue.

3. The Committee commends the State party on its large and multisectoral delegation, which was headed by the Secretary-General of the Ministry of Women, Family and Community Development, Suriani Ahmad. The delegation also included representatives of the Ministry of Home Affairs, the Chambers of the Attorney General, the Ministry of Education, the Ministry of Health, the Ministry of Rural and Regional Development, the Ministry of Human Resources and the Permanent Mission of Malaysia to the United Nations Office and other international organizations in Geneva.

4. The Committee appreciates the open and constructive dialogue that took place between the delegation and the members of the Committee, 12 years after the last dialogue, in 2006. However, it regrets the lack of relevant and sufficient data provided by the delegation in response to the majority of questions posed by the Committee during the dialogue.

* Adopted by the Committee at its sixty-ninth session (19 February–9 March 2018).

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B. Positive aspects

5. The Committee welcomes the progress achieved since the consideration in 2006 of the State party's combined initial and second periodic reports (CEDAW/C/MYS/CO/2) in undertaking legislative reforms, in particular the adoption of the following:

(a) Amendments to the Penal Code to increase the penalties for offences relating to rape and incest, in 2006;

(b) Anti-Trafficking in Persons Act of 2007, subsequently amended as the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act of 2007, in 2010, and further amended in 2015;

(c) Amendments to the Domestic Violence Act of 1994 to widen the definition of domestic violence to include emotional, mental and psychological forms of violence, in 2011, and to improve protection for survivors of abuse, in 2017;

(d) Amendments to the Employment Act of 1955 to prohibit sexual harassment in the workplace and to extend maternity leave benefits to all women employees, in 2012.

6. The Committee welcomes the fact that, in the period since the consideration of the previous report, the State party has ratified or acceded to the following international instruments:

(a) Convention on the Rights of Persons with Disabilities, in 2010;

(b) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, in 2012;

(c) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in 2012.

7. The Committee also notes with appreciation the initiatives taken by the State party to promote gender equality, such as the adoption of the national women's policy and action plan, 2009–2015, the policy objective of achieving women's representation in at least 30 per cent of decision-making positions in the public and private sectors and efforts to encourage the private sector to implement flexible working arrangements to provide wider opportunities for women to participate in the labour force.

C. Parliament

8. **The Committee stresses the crucial role of the legislative power in ensuring the full implementation of the Convention (see the statement by the Committee on its relationship with parliamentarians, adopted at the forty-fifth session, in 2010). It invites Parliament, in line with its mandate, to take the necessary steps regarding the implementation of the present concluding observations between now and the submission of the next periodic report.**

D. Principal areas of concern and recommendations

Reservations

9. The Committee welcomes the withdrawal by the State party of its reservations to articles 5 (a), 7 (b) and 16 (2) of the Convention in July 2010. However, the Committee notes with concern the remaining reservations to articles 16 (1) (a), (c), (f) and (g), which are contrary to the object and purpose of the Convention, but continue to be justified by the State party on the grounds that those provisions are not compatible with the Federal Constitution and Islamic or Syariah law. It further notes with concern that the State party has not taken steps to withdraw its reservation to article 9 (2) of the Convention or to give effect to the withdrawal of its reservation to article 16 (2).

10. **The Committee reiterates its previous recommendation (see CEDAW/C/MYS/CO/2, para. 10) that the State party demonstrate its commitment to eliminating all forms of discrimination against women by withdrawing all of its remaining reservations to articles 9 and 16 within a clear time frame so as to ensure the full applicability of the Convention in the State party.**

Constitutional and legislative framework

11. The Committee reiterates its previous concern that the Convention is not yet part of the national legal system and thus its provisions are not enforceable in national courts. It also reiterates its concern about the continued absence of a definition of discrimination against women in the State party's legislation in accordance with article 1 of the Convention, and about the narrow interpretation of the courts of the prohibition of gender-based discrimination under article 8 (2) of the Federal Constitution, restricting it to acts committed by the authorities and not protecting women against discrimination by private actors, such as private employers. While the Committee notes the intention, expressed by the State party since 2006, to adopt a gender equality act that incorporates the provisions of the Convention, it regrets the lack of any progress made in that regard. The Committee is also concerned that the lack of legal clarity and that the inconsistent application of the Convention is further compounded by the federal structure of the State party. The Committee is further concerned about the existence of a parallel legal system of civil law and multiple versions of Syariah law, which have not been harmonized in accordance with the Convention, as previously recommended by the Committee (see CEDAW/C/MYS/CO/2, para. 14), which leads to a gap in the protection of women against discrimination, including on the basis of their religion. The Committee also regrets the lack of measures taken to ratify the Optional Protocol to the Convention.

12. **Recalling its previous recommendations (CEDAW/C/MYS/CO/2, paras. 8 and 12) and its general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, the Committee recommends that the State party:**

(a) **Take immediate measures to ensure that the Convention and its provisions are incorporated into national law and become fully enforceable in the national legal system;**

(b) **Adopt a concrete time frame for the adoption of a gender equality act that defines and prohibits all forms of discrimination against women, encompassing direct and indirect discrimination in the private and public**

spheres and intersecting forms of discrimination against women, in line with article 1 of the Convention and target 5.1 of the Sustainable Development Goals;

(c) **Take effective measures to ensure that civil law and Syariah law are in full compliance with the provisions of the Convention at the local, state and federal levels so as to ensure that the rights of all women are legally guaranteed on an equal footing throughout the State party. The Committee reminds the State party that provisions of its internal law cannot be used as justification for its failure to abide by its obligations under the Convention;**

(d) **Adopt a concrete time frame for the ratification of the Optional Protocol to the Convention.**

Access to justice

13. The Committee appreciates the State party's efforts to improve access to legal aid by introducing the legal aid (amendment) bill, 2017, which aims at introducing a more practical approach to determine a person's eligibility for legal aid. Nevertheless, the Committee remains concerned about the existence of multiple barriers impeding women's and girls' access to justice and effective remedies for violations of their rights, including discriminatory stereotypes and gender biases among personnel throughout the justice system and the exclusion, except in capital punishment cases, of non-nationals from gaining access to legal aid services offered by the State. The Committee is concerned that such obstacles negatively impact women who are already in precarious situations, such as migrant women, in particular undocumented migrant women, women held in immigration detention centres and asylum-seeking and refugee women.

14. **Recalling its general recommendation No. 33 (2015) on women's access to justice, the Committee recommends that the State party:**

(a) **Simplify the procedure for gaining access to legal aid and ensure that it is available and accessible to all women, regardless of nationality in all cases of criminal, civil, social, administrative, constitutional and family law;**

(b) **Identify and address the specific obstacles faced by women who are in disadvantaged situations, including migrant women, in particular undocumented migrant women, women held in immigration detention centres, and asylum-seeking and refugee women, so as to ensure that they have access to justice and recourse to effective remedies;**

(c) **Strengthen the gender responsiveness and gender sensitivity of the justice system, including by increasing the number of women in the justice system and providing systematic capacity-building for judges, prosecutors, lawyers, police officers and other law enforcement officials on the Convention, the Committee's jurisprudence and its general recommendations;**

(d) **In its next periodic report, provide data disaggregated by sex, age, nationality and other relevant factors on the number of applicants for legal aid, the number of individuals who were assisted and the number of cases that were concluded in favour of the applicant.**

National machinery and policies for the advancement of women

15. The Committee appreciates the efforts made by the Ministry of Women, Family and Community Development, as the national women's machinery, to adopt policies and strategies aimed at the advancement of women, such as the national policy on

women and its associated national action plan, gender mainstreaming programmes, and gender-responsive budgeting. However, the Committee is concerned about their limited effectiveness, as acknowledged by the State party, due to the lack of political will and understanding on the part of Government agencies with regard to gender equality and the lack of institutional mechanisms, including the lack of capacity to advise Government agencies and to monitor, track and evaluate policies and programmes. The Committee also regrets the lack of data disaggregated by sex that could be used to identify areas where substantive equality between women and men is lacking and to evaluate the impact of measures taken to address the situation.

16. **The Committee recommends that the State party:**

(a) **Ensure that all policies, strategies and action plans aimed at the advancement of women, such as the national women's policy and plan of action, gender mainstreaming and gender-responsive budgeting, are accompanied by clear targets, indicators and time frames and effective coordination, monitoring and evaluation mechanisms;**

(b) **Provide systematic and regular training to officials responsible for the planning and implementation of policies, strategies and action plans aimed at the advancement of women, so as to increase their awareness, knowledge and capacity with respect not only to technical matters, but also to gender equality;**

(c) **Ensure that gender mainstreaming is applied consistently in the development and implementation of all laws, policies and programmes in all ministries and legislative structures, including by strengthening training programmes and the gender focal point system and establishing a coordinating committee across agencies;**

(d) **Ensure that gender-responsive budgeting is integrated into outcome-based budgeting and is effectively institutionalized through a comprehensive road map in all government agencies at the federal, state and local council levels;**

(e) **Develop a comprehensive system to collect, analyse and publish data on all areas covered by the Convention, disaggregated by sex, age, disability, ethnic origin, religion and other relevant factors, so that such data and analyses can be used for the formulation of laws, policies and plans, as well as for the monitoring and evaluation of their implementation and that of the Sustainable Development Goals.**

Temporary special measures

17. The Committee appreciates the initiatives taken by the State party to increase the participation of women in the labour force and their numbers in decision-making positions, such as the targets set out in the eleventh Malaysia plan, 2016–2020. However, the Committee is concerned that the use of temporary special measures has been limited and that the measures that have been adopted thus far lack specific guidelines and mechanisms for implementation, monitoring and evaluation.

18. **The Committee recommends that the State party:**

(a) **Ensure that temporary special measures are accompanied by specific guidelines and mechanisms to ensure effective implementation, monitoring and evaluation in accordance with article 4 (1) of the Convention and the Committee's general recommendation No. 25 (2004) on temporary special measures;**

(b) **Expand the use of temporary special measures, such as outreach or support programmes, allocation and/or reallocation of resources, targeted recruitment, hiring and promotion, numerical goals connected with time frames, and quota systems, to accelerate the realization of substantive equality between women and men in all areas where women continue to be underrepresented or disadvantaged, and in particular targeting women who face multiple and intersecting forms of discrimination.**

Stereotypes

19. The Committee reiterates its previous concern (see CEDAW/C/MYS/CO/2, para. 15) about the persistence of patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men in the family and in society, which present a significant impediment to the implementation of the Convention and are a root cause of the disadvantaged position of women in several areas, including in the labour market and in political and public life. In addition, while noting that offensive language or sexist remarks have been prohibited in Parliament following the amendment of standing order 36 (4) of the House of Representatives in November 2012, the Committee is concerned that sexist or condescending remarks about women by members of Parliament persist and that those responsible have not been held accountable. It expresses further concern about reports of the "moral policing" of women by private citizens and religious authorities in order to impose dress codes on women.

20. **The Committee recommends that the State party:**

(a) **Adopt a comprehensive strategy with proactive and sustained measures that target women and men at all levels of society, including religious and traditional leaders, to eliminate discriminatory stereotypes and patriarchal attitudes concerning the roles and responsibilities of women and men in the family and in society;**

(b) **Adopt measures to encourage men to share child-rearing and housework responsibilities equally with women, including by introducing paternity leave in both the public and private sectors and by introducing flexible working arrangements for both fathers and mothers;**

(c) **Adopt innovative measures targeting the media to strengthen the understanding of the substantive equality of women and men and use the education system to enhance positive and non-stereotypical portrayals of women;**

(d) **Ensure that members of Parliament are held accountable for sexist or condescending remarks about women through the effective application of standing order 36 (4), as amended in 2012;**

(e) **Monitor and review the measures taken to combat stereotypes in order to assess their impact and revise them as appropriate.**

Female genital mutilation

21. The Committee expresses deep concern about the issuance of a fatwa on female circumcision by the Malaysian National Council of Islamic Religious Affairs in April 2009, which makes it obligatory for Muslim women to undergo female genital circumcision. It is further concerned that the Ministry of Health has developed guidelines in 2012 to reclassify female circumcision as a medical practice, which has

allowed the practice to be performed in health-care facilities and has contributed to the endorsement of female genital mutilation as a medically safe and beneficial procedure.

22. **The Committee stresses that female genital mutilation, female circumcision or female genital cutting cannot be justified on religious grounds and constitutes a harmful practice to exert control over the bodies and sexuality of women and girls in violation of the Convention, irrespective of the extent of removal or cutting of the female genital organs and of whether or not it is performed within or outside a medical institution. It therefore recommends that the State party:**

(a) **Prohibit all forms of female genital mutilation in its criminal code, ensuring that the prohibition cannot be overruled by any fatwas or other rulings issued by religious or clerical authorities, as well as in practice, in accordance with joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2014) on harmful practices, target 5.3 of the Sustainable Development Goals and General Assembly resolution 69/150 on intensifying global efforts for the elimination of female genital mutilations;**

(b) **Engage in a constructive dialogue with religious authorities, women's non-governmental organizations and the public to convey the point that female genital mutilation cannot be justified by religion;**

(c) **Undertake awareness-raising and educational activities aimed at promoting consensus towards the elimination of female genital mutilation, in particular by addressing the misconception that female circumcision is acceptable owing to its presumed medical and hygienic benefits.**

Gender-based violence against women

23. The Committee welcomes the measures taken by the State party to enhance the legal protection of women from gender-based violence, including by amending the Domestic Violence Act in 2017. Nevertheless, the Committee remains concerned about the following:

(a) The lack of data available regarding the prevalence of all forms of gender-based violence against women in the State party and the number of complaints resulting in investigations, prosecutions and convictions;

(b) The lack of legislation criminalizing marital rape, given that section 375 of the Penal Code stipulates that rape within a marriage does not constitute rape;

(c) The lack of inclusion of intimate partner violence within the scope of the Domestic Violence Act, thereby denying unmarried women access to protection orders and compensation under the Act;

(d) The fact that perpetrators of rape evade prosecution by marrying their underage victims;

(e) The use of whipping by Syariah courts as a form of punishment, whereas the whipping of women is prohibited under the Criminal Procedure Code.

24. **Recalling its general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, the Committee recommends that the State party:**

(a) Establish a system to regularly collect, analyse and publish statistical data on the number of complaints of all forms of gender-based violence against women, disaggregated by sex, age, ethnicity, geographic location and relationship between the victim and the perpetrator, on the number and type of protection orders issued, on the rates of dismissal and withdrawal of complaints, on prosecution and conviction and on the amount of time taken for the disposal of cases;

(b) Criminalize marital rape in national legislation, defining such rape on the basis of the lack of freely given consent of the woman;

(c) Ensure that victims of intimate partner violence have access to protection orders and compensation on an equal footing with married women;

(d) Take effective measures to ensure that perpetrators of rape, including those who rape women with an object or commit incestuous rape, are effectively punished and that they do not evade criminal sanctions by marrying their victims;

(e) Harmonize Syariah law with section 289 of the Criminal Procedure Code to prohibit the whipping of women as a form of punishment;

(f) Adopt concrete measures to combat gender-based violence against women and girls, including the provision of mandatory, recurrent and effective capacity-building, education and training for members of the judiciary, lawyers and law enforcement officials and educational campaigns targeting men and boys.

Trafficking and exploitation of prostitution

25. The Committee acknowledges the efforts made by the State party to combat trafficking, including through the adoption of the Anti-Trafficking in Persons and Anti-Smuggling in Migrants Act 2007 and its successive amendments, and the national action plan on anti-trafficking in persons, 2016–2020. Nevertheless, the Committee remains deeply concerned that the State party remains a destination country for trafficking of women and girls, including asylum-seeking and refugee women and girls, for purposes of sexual exploitation, begging, forced labour or forced marriage. The Committee is particularly concerned about the following:

(a) The lack of a formal and uniform victim identification procedure, which may lead to the punishment of women and girls who have been trafficked for the violation of immigration laws;

(b) Complicity among law enforcement officials, including those who reportedly accept bribes to allow undocumented border crossings, and impunity for those responsible, including officials who were complicit in crimes resulting in the mass graves and abandoned camps for trafficked persons along the border between Malaysia and Thailand, which were discovered in May 2015;

(c) The inadequate assistance provided to victims of trafficking, the overcrowding and understaffing of shelters and the restrictions on the freedom of movement and the right to work of those victims due to excessive bureaucratic requirements and procedures.

26. **The Committee recommends that the State party:**

(a) Establish a formal procedure that is applied uniformly throughout the State party to promptly identify victims of trafficking and refer them to

appropriate services for protection, including the conduct of an assessment of their need for international protection, and systematically train all relevant law enforcement officials on gender-sensitive procedures for interacting with victims of trafficking;

(b) **Ensure that victims of trafficking are not punished for violations of immigration laws and that they obtain effective protection, such as temporary residence permits, irrespective of their ability or willingness to cooperate with law enforcement authorities, and redress, including rehabilitation and compensation;**

(c) **Combat impunity by investigating all cases of trafficking in persons, especially women and girls, including cases involving law enforcement officials, prosecuting perpetrators and ensuring that the sentences imposed on perpetrators are commensurate with the gravity of the crime;**

(d) **Allocate adequate resources for the effective and sustainable implementation of existing services and assistance offered to victims of trafficking, and remove all bureaucratic barriers to guarantee in practice their right to freedom of movement and their right to work;**

(e) **Reinforce international, regional and bilateral cooperation with countries of origin, transit and destination to prevent trafficking, including by exchanging information and harmonizing legal procedures for prosecuting traffickers with countries of origin, transit and destination, in particular with countries in the region.**

27. The Committee regrets the lack of information provided by the State party concerning the prevalence of the exploitation of women and girls in prostitution and the absence of policies and measures taken to combat the phenomenon, including exit programmes for women and girls who wish to leave prostitution.

28. **The Committee recommends that the State party:**

(a) **Collect and analyse data on the exploitation of women and girls in prostitution;**

(b) **Adopt targeted measures to provide assistance, rehabilitation and reintegration programmes for victims of exploitation of prostitution;**

(c) **Provide exit programmes for women and girls wishing to leave prostitution, including by providing alternative income-generating opportunities.**

Participation in political and public life

29. The Committee welcomes the announcement made by the Prime Minister of Malaysia in December 2017 that the State party was to adopt a minimum quota of 30 per cent for the representation of women among Senators in the Upper House of Parliament. However, the Committee is concerned that women continue to be underrepresented in all areas of political and public life, including in Parliament, the cabinet, local government, the judiciary and the diplomatic service, in particular in decision-making positions. It also regrets the underrepresentation of women from marginalized groups in all areas of political and public life, such as women with disabilities, indigenous women and women belonging to ethnic minority groups.

30. **The Committee recommends that the State party:**

(a) **Adopt measures, including temporary special measures, in accordance with article 4 (1) of the Convention and in line with the Committee's general recommendation No. 23 (1997) on women in political and public life and general recommendation No. 25, in order to guarantee and accelerate the full and equal participation of women at all levels, including in legislative bodies, ministerial posts and local government, the judiciary and the diplomatic service;**

(b) **Include in the next periodic report information on specific measures implemented, such as quotas, to increase the representation of women, including women with disabilities, indigenous women and women belonging to ethnic minority groups, in decision-making positions in the political and public spheres.**

Women and peace and security

31. The Committee welcomes the active role played by the State party at international forums on issues relating to conflict prevention and the peaceful resolution of conflicts and recognizes its significant contribution to United Nations peacekeeping missions through the contribution of military and police personnel. However, the Committee regrets that the State party has yet to adopt a national action plan for the implementation of Security Council resolution 1325 (2000) on women and peace and security and to ratify the Arms Trade Treaty.

32. **With reference to its general recommendation No. 30 (2013) on women in conflict prevention, conflict and post-conflict situations and target 16.4 of Sustainable Development Goals, the Committee recommends that the State party adopt a national action plan for the implementation of Security Council resolution 1325 (2000) and ratify the Arms Trade Treaty.**

Nationality

33. The Committee remains concerned about the discriminatory provisions in the Federal Constitution with regard to nationality, including the inability of Malaysian women married to foreigners to transmit their nationality to their children born abroad and to transmit their nationality to their spouses on an equal basis with Malaysian men.

34. **The Committee recommends that the State party amend all provisions of the Federal Constitution that deny women equal rights with respect to the transmission of their nationality to their children and foreign spouses. It also recommends that the State party ratify the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness.**

Education

35. The Committee commends the State party for the progress made in ensuring access to education for girls and women, as reflected in the high levels of literacy and educational attainment. However, it notes that women still remain underrepresented in traditionally male-dominated fields of study at the tertiary level, such as engineering, mathematics and physics. The Committee also notes with concern the significant difference in the percentage of men and women holding leadership positions in higher educational institutions. It further expresses concern that sex education in public schools is influenced by religious morals and focused on abstinence rather than following a human rights-based approach. The Committee also regrets the lack of information provided by the State party concerning the educational

attainment of girls who have married before the age of 18 and the percentage of girls who have continued to pursue an education during and after pregnancy. The Committee further regrets the bullying of students, including lesbian, bisexual, transgender and intersex students, and the lack of information on the policy of sending bullies to training programmes in military institutions as a corrective measure and on the impact of such a policy on the right to education of girls.

36. **Recalling its general recommendation No. 36 (2017) on the right of girls and women to education, the Committee recommends that the State party:**

(a) **Take measures to encourage girls to choose non-traditional fields of study and career paths such as engineering, mathematics and physics, and to eliminate traditional stereotypes and structural barriers that may deter girls' enrolment in such fields;**

(b) **Identify the underlying causes of the underrepresentation of women in leadership positions in higher educational institutions and use temporary special measures and other specific measures to address the disparity;**

(c) **Introduce comprehensive age-appropriate and human rights-based sexuality education as part of the school curricula, which includes information on sexual and reproductive health and responsible sexual behaviour and the importance of concepts such as consent and gender-based violence;**

(d) **Collect and publish data on the educational attainment of girls who have married before the age of 18 and the number and percentage of girls who have continued to pursue an education during and after pregnancy, and include such information in its next periodic report;**

(e) **Adopt anti-bullying policies based on alternative strategies, such as counselling services and positive discipline, and undertake awareness-raising measures to foster equal rights for lesbian, bisexual, transgender and intersex students.**

Employment

37. The Committee welcomes the efforts made by the State party to increase the labour participation of women, such as the objective set out in the eleventh Malaysia plan, 2016–2020, and to increase the representation of women in decision-making positions in the private sector, such as the establishment of a target of 30 per cent and the launching of an initiative in July 2017 to publish the names of publicly listed companies without women on their boards of directors. Nevertheless, the Committee remains concerned about the persistent pay gap in most occupational categories and the low representation of women in decision-making positions in the private sector, despite their high educational achievements and professional qualifications. The Committee also regrets the lack of sanctions for the termination of employment on the basis of pregnancy and the lack of a comprehensive law on sexual harassment in the State party.

38. **The Committee recommends that the State party:**

(a) **Systematically review obstacles to women's access to decision-making positions in the private sector and adopt holistic measures to remove barriers such as discriminatory stereotypes, gender bias in the workplace and family pressure on women to assume responsibilities in the home;**

(b) Ensure that targets and initiatives aimed at increasing the representation of women in decision-making positions in the private sector are accompanied by specific guidelines and mechanisms to ensure effective implementation, monitoring and evaluation;

(c) Reduce the gender pay gap by regularly reviewing remuneration in sectors in which women are concentrated and establishing effective monitoring and regulatory mechanisms for employment and recruitment practices to ensure that the principle of equal pay for work of equal value is guaranteed in national legislation and adhered to in all sectors;

(d) Ensure that there are adequate sanctions in law and in practice for the termination of employment on the basis of pregnancy;

(e) Adopt a comprehensive law on sexual harassment that enables complainants to seek redress without the expenditure in time and money and without the public exposure associated with going to court.

Health

39. The Committee is concerned about the obstacles faced by certain groups of women that block their access to health-care services in the State party, including asylum-seeking and refugee women, women migrant workers, rural women, transgender women and indigenous women. It is particularly concerned that non-citizens are required to pay a deposit before they are admitted to public hospitals and that, under the Fees Act (Medical) 1951 for Foreigners, public hospitals charge them higher fees than they do Malaysian nationals for the same health-care services, which severely restricts access to health care for women with low incomes, such as asylum-seeking and refugee women and migrant women employed as domestic workers. The Committee is also concerned about a Government directive that requires public hospitals to refer undocumented asylum seekers and migrants to the Immigration Department when they seek medical attention, which has serious consequences for maternal, foetal and infant mortality and morbidity as women are deterred from seeking essential health-care services for fear of arrest and detention.

40. **The Committee recommends that the State party:**

(a) Ensure that all women, regardless of nationality or income, have effective access to affordable health-care services, including maternity, family planning and reproductive health-care services;

(b) Take measures to improve the affordability of health care services for non-citizens, including by fully exempting asylum-seeking and refugee women from having to pay deposits and higher fees than nationals of Malaysia for the same health-care services;

(c) Immediately repeal the directive requiring public hospitals to refer undocumented asylum seekers and migrants to the Immigration Department.

Rural women

41. The Committee appreciates the measures adopted by the State party to improve the quality of life of aboriginal people and ethnic minorities in rural areas. However, it is concerned about the lack of specific measures targeting women and girls in those communities, the low representation of women on village committees and the high school drop-out rates among rural girls.

42. **With reference to its general recommendation No. 34 (2016) on the rights of rural women, the Committee recommends that the State party:**

(a) **Expand programmes aimed at facilitating access for women and girls to education, employment and health care, including through the adoption of temporary special measures;**

(b) **Eliminate all barriers inhibiting the participation of rural women in village committees and ensure the integration and mainstreaming of a gender perspective into all agricultural and rural development policies, strategies, plans and programmes, enabling rural women to act and be visible as stakeholders, decision makers and beneficiaries;**

(c) **Ratify the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization (ILO).**

Migrant women employed as domestic workers

43. The Committee reiterates its previous concern (see CEDAW/C/MYS/CO/2, para. 25) regarding the situation of migrant women employed as domestic workers, who, under the State party's labour laws, are denied equal labour rights in that they do not enjoy the same legal guarantees as other migrant workers, including in relation to minimum wages, working hours, rest days, leave, freedom of association and social security coverage. The Committee is concerned that that leaves migrant women employed as domestic workers vulnerable to exploitation and abuse. The Committee is further concerned that women employed as domestic workers are prohibited from getting pregnant during their contract of service and that they are required to pay higher fees for health-care services at public hospitals and clinics.

44. **Recalling its previous recommendation (see CEDAW/C/MYS/CO/2, para. 26), the Committee recommends that the State party:**

(a) **Ensure that migrant women employed as domestic workers are guaranteed the same level of protection and benefits as other migrant workers in law and in practice and that they have access to effective remedies and redress against abuse by employers;**

(b) **Repeal the policy that prohibits migrant women employed as domestic workers from becoming pregnant on the grounds that, under normal circumstances, their contract of service is limited to two years;**

(c) **Ensure that women migrant workers have access to affordable health-care services;**

(d) **Ratify the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and Domestic Workers Convention, 2011 (No. 189).**

Refugee and asylum-seeking women

45. The Committee reiterates its previous concern (see CEDAW/C/MYS/CO/2, para. 27) that the State party has not enacted any laws or regulations concerning the status of asylum seekers and refugees, and that asylum seekers and refugees, including women and girls, are prosecuted for immigration-related offences and may be deported or detained indefinitely at immigration detention centres. While noting the assertion made by the State party that it complies with the principle of non-refoulement, the Committee expresses grave concern at reports indicating the contrary, including recent reports of refoulements, including of women, even though

they were registered with the Office of the United Nations High Commissioner for Refugees. The Committee is further concerned that the State party lacks a legal and administrative framework to protect asylum seekers and refugees and regularize their status, which limits the access of asylum-seeking and refugee women and girls to the formal labour market, public education, health and social services and legal assistance and exposes them to a range of human rights violations, including arbitrary arrest and detention, exploitation and sexual and gender-based violence in detention centres and elsewhere.

46. **With reference to its general recommendation No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, the Committee recommends that the State party:**

(a) **Ratify the Convention relating to the Status of Refugees and the Protocol thereto without further delay;**

(b) **Adopt national asylum and refugee legislation and procedures in conformity with international standards, in order to ensure that the specific needs of women and girls are addressed and codify the principle of non-refoulement;**

(c) **Fully respect the principle of non-refoulement and ensure that no individual who is registered with the Office of the United Nations High Commissioner for Refugees is deported;**

(d) **Ensure full access to asylum procedures for asylum seekers in the State party, including for women and girls;**

(e) **Establish alternatives to detention for asylum-seeking and refugee women and girls, and in the interim take concrete measures to ensure that detained women and girls have access to adequate hygiene facilities and material necessities and are protected from all forms of gender-based violence, including by ensuring that all complaints are effectively investigated, perpetrators are prosecuted and adequately punished and victims are offered effective remedies;**

(f) **Ensure that asylum-seeking and refugee women and girls have access in practice to income-generating opportunities, education, health care and other basic social services appropriate for their specific needs, as well as to legal assistance.**

Lesbian, bisexual and transgender women and intersex persons

47. The Committee is concerned at reports of harassment of, and discrimination and attacks against lesbian, bisexual and transgender women and intersex persons by State authorities, including the police, members of religious institutions and private citizens. It notes with concern that their situation is exacerbated by the discriminatory laws and policies of the State party.

48. **The Committee recommends that the State party undertake awareness-raising measures to eliminate discrimination and negative stereotypes against lesbian, bisexual and transgender women and intersex persons. In particular, it recommends that the State party:**

(a) **Amend all laws that discriminate against lesbian, bisexual and transgender women and intersex persons, including the provisions of the Penal Code and Syariah laws that criminalize same-sex relations between women and cross-dressing;**

(b) Apply a policy of zero tolerance with regard to discrimination and violence against lesbian, bisexual and transgender women and intersex persons, including by prosecuting and adequately punishing perpetrators;

(c) Expedite measures to discontinue all policies and activities aimed at "correcting" or "rehabilitating" lesbian, bisexual and transgender women and intersex persons.

Women human rights defenders

49. The Committee is concerned about reports that women human rights defenders, in particular those advocating for the rights of Muslim women, the rights of lesbian, bisexual and transgender women and intersex persons and democratic reforms, have been subjected to arbitrary arrest, harassment and intimidation by State authorities and members of religious institutions, including through the adoption of fatwas against women's organizations working on the above-mentioned issues.

50. **The Committee recommends that the State party ensure that women human rights defenders can freely undertake their important work without fear or threat of arbitrary arrest, harassment or intimidation, including the issuance of fatwas by religious institutions, by fully guaranteeing their rights to freedom of expression, assembly and association. It also recommends that the State party provide capacity-building on women's rights and gender equality to law enforcement officials, members of the judiciary and members of religious institutions.**

Foreign wives

51. The Committee is concerned that foreign women who are married to men who are nationals of Malaysia are dependent on their husbands to maintain their legal status in the country, which places them in a vulnerable position, in particular in cases of domestic violence. It also notes with concern that foreign wives with long-term social visit passes are prohibited from engaging in any form of employment, which creates further dependence on their husbands.

52. **The Committee recommends that the State party revise its laws and policies to simplify the process of granting legal status to foreign women who are married to men who are nationals of Malaysia, including by removing the requirement that the husband be present when the wife applies for the renewal of her long-term social visit pass, and to simplify the process of obtaining permanent residency. It also recommends that the State party amend its laws and policies to enable foreign wives to work.**

Marriage and family relations

53. The Committee welcomes the legislative amendments of the State party's civil law to end discrimination against women in marriage and in the family and the Federal Court decision of 29 January 2018 in the Indira Gandhi case, in which it, inter alia, affirmed the jurisdiction of civil courts over matters of Islamic law and actions of Islamic authorities. Nevertheless, the Committee remains concerned that:

(a) Muslims, who constitute sixty percent of the State party's population, are covered by Islamic family law, which has become increasingly discriminatory towards women;

(b) Muslim women do not have equal rights in family and marriage matters to men, including in their capacity to enter into marriage and to divorce, nor do they enjoy equal rights with regard to maintenance, custody, guardianship and religious conversion of their children, and inheritance;

(c) Polygamy is permitted for Muslim men under the Islamic Family Law (Federal Territories) Act 2006 and the criteria for polygamy have become less restrictive following amendments to the original act of 1984;

(d) Child marriages continue to be permitted under both the Law Reform (Marriage and Divorce) Act and Islamic family law, despite the withdrawal of the State party's reservation to article 16 (2) of the Convention, and that the rate of child marriages is increasing;

(e) Conversion from Islam to another religion or belief is prohibited, although conversion from other religions or beliefs to Islam is allowed, even though that sometimes leads to serious consequences for the non-Muslim spouse.

54. **The Committee reiterates its previous recommendation (see CEDAW/C/MYS/CO/2, para. 14) that the State party undertake a process of law reform to remove inconsistencies between civil law and Syariah law, including by ensuring that any conflict of law with regard to women's rights to equality and non-discrimination is resolved in full compliance with the Constitution and the Convention. In particular, it recommends that the State party:**

(a) **Provide safeguards against violations of women's human rights in all family and marriage matters by enabling State courts or administrative bodies to review all decisions and provisions of the Syariah law system, including actions taken by Islamic authorities, in accordance with the Federal Court judgment of 29 January 2018 in the Indira Gandhi case, as well as the Committee's general recommendation No. 33 and general recommendation No. 29 (2013) on the economic consequences of marriage, family relations and their dissolution;**

(b) **Ensure that Muslim women have equal rights in all family and marriage matters, including equal capacity as men to enter into marriage and to divorce, and that they enjoy equal rights with regard to the maintenance, custody and guardianship of their children and inheritance;**

(c) **Prohibit the unilateral religious conversion of children to Islam by a father who converts to Islam;**

(d) **Discourage and prohibit polygamy in accordance with the Committee's general recommendation No. 21 (1994) on equality in marriage and family relations and general recommendation No. 29 and the joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child;**

(e) **Raise the minimum age of marriage to 18 for women and men for both civil and Muslim marriages and require the full consent of women for any marriage;**

(f) **Fully guarantee the right to freedom of religion or belief, which includes the right of individuals to convert from Islam to another religion or belief, and ensure that religious interpretations do not perpetuate gender inequality by taking appropriate measures, as recommended in the reports of the Special Rapporteur on freedom of religion or belief.**

Amendment to article 20 (1) of the Convention

55. **The Committee encourages the State party to accept the amendment to article 20 (1) of the Convention concerning the meeting time of the Committee.**

Beijing Declaration and Platform for Action

56. **The Committee calls upon the State party to use the Beijing Declaration and Platform for Action in its efforts to implement the provisions of the Convention.**

2030 Agenda for Sustainable Development

57. **The Committee calls for the realization of substantive gender equality, in accordance with the provisions of the Convention, throughout the process of implementation of the 2030 Agenda for Sustainable Development.**

Dissemination

58. **The Committee requests the State party to ensure the timely dissemination of the present concluding observations, in the official language of the State party, to the relevant State institutions at all levels (national, regional, local), in particular to the Government, the ministries, Parliament and the judiciary, to enable their full implementation.**

Ratification of other treaties

59. **The Committee notes that the adherence of the State party to the nine major international human rights instruments[1] would enhance the enjoyment by women of their human rights and fundamental freedoms in all aspects of life. The Committee therefore encourages the State party to ratify the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the International Convention for the Protection of All Persons from Enforced Disappearance, to which it is not yet a party.**

Follow-up to concluding observations

60. **The Committee requests the State party to provide, within two years, written information on the steps taken to implement the recommendations contained in paragraphs 12 (b) (constitutional and legislative framework), 22 (b) (female genital mutilation), 46 (b) (refugee and asylum-seeking women) and 54 (a) (marriage and family relations) above.**

[1] The International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the International Convention for the Protection of All Persons from Enforced Disappearance; and the Convention on the Rights of Persons with Disabilities.

Preparation of the next report

61. **The Committee invites the State party to submit its sixth periodic report in March 2022. The report should be submitted on time and, in case of delay, should cover the entire period up to the time of its submission.**

62. **The Committee requests the State party to follow the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents (see HRI/GEN/2/Rev.6, chap. I).**